

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RAMON QUIROZ, et al.,

NOT FOR PUBLICATION

Plaintiffs,

MEMORANDUM & ORDER

-against-

10-cv-2485 (KAM) (JMA)

U.S. BANK NATIONAL ASSOCIATION, et
al.,

Defendants.

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MATSUMOTO, United States District Judge:

Before the court are objections to an order by Magistrate Judge Azrack dated September 13, 2010 and filed on September 16, 2010 ("9/13/10 Order"), denying plaintiffs' motion for appointment of counsel without prejudice to renew after the adjudication of defendants' motions to dismiss. (See ECF No. 27, Order dated 9/13/10 ("9/13/10 Order").) For the reasons that follow, the objections to the 9/13/10 Order are overruled and the order by Judge Azrack is affirmed.

Judge Azrack initially issued the order denying appointment of counsel as a Report and Recommendation. (See 9/13/10 Order.) On December 14, 2010, this court noted that because the motion for appointment of counsel was not a dispositive pretrial matter, a Report and Recommendation was not required. (See ECF No. 44, Order dated 12/14/10 ("12/14/10 Order") at 1-2.) The court determined that it would "treat the

September 13, 2010 Report and Recommendation as a Magistrate Judge order subject to 'clear error' review." (*Id.* (citing Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A)).) The court further noted that plaintiffs may not have received notice of their right to object to the determination by Judge Azrack to deny the motion for appointment of counsel, and thus granted plaintiffs seventeen (17) days to file any objections. (*Id.* at 2.) Plaintiffs were served with a copy of the December 14, 2010 Order by first class mail on December 15, 2010. (See ECF No. 45, Affidavit of Service dated 12/15/10.) On December 30, 2010, plaintiffs filed objections to Judge Azrack's order denying their motion for appointment of counsel. (See ECF No. 46, Objection to 9/13/10 Order.) Plaintiffs filed amended objections on March 4, 2011. (See ECF No. 47, Amended Objection to 9/13/10 Order.)

In reviewing objections to a magistrate judge order on a non-dispositive matter, the district judge must "modify or set aside any part of the order that is clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a); *see also* 28 U.S.C. § 636(b)(1)(A). Because a motion for appointment of counsel is a non-dispositive matter, *see Bennett v. Goord*, No. 06-3818-pr, 2008 WL 5083122, at *1 (2d Cir. Dec. 2, 2008) (applying Fed. R. Civ. P. 72(a) standard to motion for appointment of counsel), plaintiffs objections are subject only to "clear error" review.

Upon a careful review of Judge Azrack's thorough legal analysis in the 9/13/10 Order and plaintiffs' objections and amended objections, the court finds that that the 9/13/10 Order was not clearly erroneous or contrary to law. Accordingly, plaintiffs' objections to the 9/13/10 Order are overruled and the order denying the appointment of counsel without prejudice to renew after adjudication of defendants' motions to dismiss is affirmed.

Defendants' counsel is directed to serve a copy of this Order on plaintiffs and file a Certificate of Service by ECF no later than June 23, 2011.

SO ORDERED.

Dated: June 21, 2011
Brooklyn, New York

/s/

Kiyo A. Matsumoto
United States District Judge
Eastern District of New York